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Attorney for Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SATWINDER SINGH,

Plaintiff,

vs.

EMILIO T. GONZALEZ,  
Director, United States Citizenship  
and Immigration Services,

Defendant

Case No.

COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTION

Plaintiff alleges:

1. This action is brought pursuant to the provisions of 28 U.S.C. § 1331 and 5 U.S.C. §§ 701 - 706.
2. Defendant is the Director of the United States Citizenship and Immigration Services, (USCIS), an agency of the United States as defined by 5 U.S.C. §701(b)(1), charged with the duty to administer and enforce the Immigration and Nationality Act.
3. Plaintiff is a citizen and national of India who was admitted to the United States on August 24, 1997 as an asylee based upon an approved asylee relative petition filed on plaintiff's behalf by his father, Surinder Singh. See, attached Exhibit A.
4. 8 U.S.C. §1159(b) vests the USCIS with discretion to adjust the status of an asylee to an alien lawfully admitted for permanent residence.

1 5. On November 8, 1998 plaintiff applied for adjustment of status by filing an application  
2 with the USCIS in the manner prescribed in 8 C.F.R. §209.2. *See*, Exhibit B.

3 6. On January 5, 2005 plaintiff's father was admitted as a citizen of the United States. *See*,  
4 Exhibit C.

5 7. On January 10, 2006 the USCIS informed plaintiff that he was no longer eligible for  
6 adjustment of status as an asylee because his father was a United States citizen. *See*, Exhibit D.

7 8. On January 17, 2006 plaintiff filed a second application for adjustment of status with the  
8 USCIS. *See*, Exhibit E.

9 9. It is defendant's legal duty to adjudicate plaintiff's application for adjustment of status  
10 and to adjust plaintiff's status to lawful permanent resident and provide notice of the decision to  
11 plaintiff if the application is approved, or, if plaintiff's application is denied, forward written notice  
12 of the decision to plaintiff that includes the reasons for denial.

13 10. 5 U.S.C. §555(b) dictates that the USCIS must proceed to conclude action on plaintiff's  
14 application within "a reasonable time". Defendant has violated his duty by failing to adjudicate  
15 plaintiff's application within a reasonable time, and by not providing plaintiff with timely notice of  
16 a decision on his application. Defendant's failure to adjudicate plaintiff's application violates 8  
17 U.S.C. §§1159(b) and 1255(a) and 5 U.S.C. §555(b).

18 11. Plaintiff's adjustment application remains pending.

19 12. There is no administrative appeal from defendant's decision.

20 13. There is a real and actual controversy between the parties. Plaintiff has no adequate  
21 remedy at law. Plaintiff has suffered and will continue to suffer irreparable injury as result of the  
22 acts of the defendant complained herein.

23 WHEREFORE, plaintiff prays judgment.

24 1. Declaring that defendant has violated 8 U.S.C. §§1159(b) and 1255(a) and 5 U.S.C.  
25 §555(b) in the adjudication of plaintiff's application for adjustment of status.

26 2. Preliminarily and permanently enjoining defendant, his agents, and delegates to  
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1 immediately adjudicate plaintiff's application for adjustment of status.

2 3. Awarding plaintiff his costs and reasonable attorneys fees incurred in this action;

3 4. Granting such other and further relief as may be appropriate.

4 Dated: July 3, 2007

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6 JONATHAN M. KAUFMAN  
Attorney For Plaintiff  
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# **EXHIBIT A**

Departure Number

140032063 06

Immigration and  
Naturalization Service

I-94

Departure Record

ADMITTED AS AN ASYLEE  
PURSUANT TO SEC. 208(a)  
OF THE I&N ACT. IF YOU  
DEPART THE UNITED STATES  
YOU WILL NEED PRIOR  
PERMISSION FROM THE  
U S IMMIGRATION SERVICE  
TO RETURN  
VALID INDEFINITELY

SEP 20 1996 AUG 24 1997

14. Family Name SINGH		16. Birth Date (Day/Mo/Yr) 15.01.90
15. First (Given) Name SATWINDER		
17. Country of Citizenship INDIA		

A nonimmigrant who accepts unauthorized employment is subject to deportation.

**Important** - Retain this permit in your possession; *you must surrender it when you leave the U.S.* Failure to do so may delay your entry into the U.S. in the future.

You are authorized to stay in the U.S. only until the date written on this form. To remain past this date, without permission from immigration authorities, is a violation of the law.

- By sea or air, to the transportation line;
- Across the Canadian border, to a Canadian Official;
- Across the Mexican border, to a U.S. Official.

Students planning to reenter the U.S. within 30 days to return to the same school, see "Arrival-Departure" on page 2 of Form I-20 prior to surrendering this permit.

Record of Changes

A 75260419

Port:

Date:

Carrier:

Flight #/Ship Name:

Departure Record

## **EXHIBIT B**

U.S. Department of Justice  
Immigration and Naturalization Service

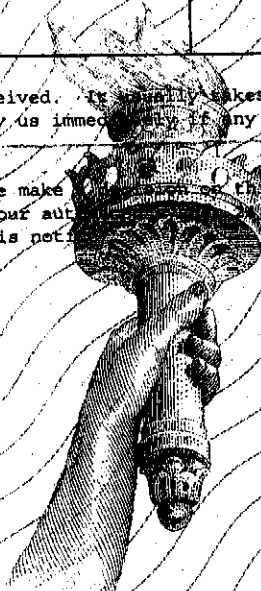
# Notice of Action

## UNITED STATES OF AMERICA

RECEIPT NUMBER LIN-99-019-50346		CASE TYPE 1485 APPLICATION TO ADJUST TO PERMANENT RESIDENT STATUS
RECEIVED DATE November 9, 1998	PRIORITY DATE	APPLICANT A75 258 419 SINGH, SATWINDER
NOTICE DATE November 13, 1998	PAGE 1 of 1	
SATWINDER SINGH C/O SURINDER SINGH 4016 MINUET CIR RICHMOND CA 94803		Notice Type: Receipt Notice  Amount received: \$ 160.00

The above application or petition has been received. It usually takes 208 to 238 days from the date of this receipt for us to process this type of case. Please notify us immediately if any of the above information is incorrect. Our customer service phone number is listed below.

We will send you a written notice as soon as we make a decision on this case. You can also use the phone number below to obtain case status information direct from our automatic phone system 24 hours a day with a touch-tone phone and the receipt number for this case (at the top of this notice).



Please see the additional information on the back. You will be notified separately about any other cases you filed.

NEBRASKA SERVICE CENTER  
U. S. IMMIG. & NATZ. SERVICE  
P.O. BOX 92521  
LINCOLN NE 68501-2521  
Customer Service Telephone: 402-437-5218



# **EXHIBIT C**



# UNITED STATES OF AMERICA

**CERTIFICATE**



**NATURALIZATION**

No. 28545333

Personal description of holder  
as of date of naturalization:

Date of birth: **JANUARY 01, 1960**

Sex: **MALE**

Height: **5** feet **8** inches

Marital status: **MARRIED**

Country of former nationality:  
**INDIA**



US Registration No. **A073407120**

I certify that the description given is true, and that the photograph affixed hereto is a likeness of me.

*Surinder Singh*  
(Complete and true signature of holder)

Be it known that, pursuant to an application filed with the Secretary of Homeland Security

at: **SAN FRANCISCO, CALIFORNIA**

The Secretary having found that:

**SURINDER SINGH**

then residing in the United States, intends to reside in the United States when so required by the Naturalization Laws of the United States, and had in all other respects complied with the applicable provisions of such naturalization laws and was entitled to be admitted to citizenship, such person having taken the oath of allegiance in a ceremony conducted by the

**US CITIZENSHIP AND IMMIGRATION SERVICES**

at: **SAN FRANCISCO, CALIFORNIA** on: **JANUARY 05, 2005**

IT IS PUNISHABLE BY U. S. LAW TO COPY, PRINT OR PHOTOGRAPH THIS CERTIFICATE, WITHOUT LAWFUL AUTHORITY.

that such person is admitted as a citizen of the United States of America.

*James J. Owens*  
Director, U. S. Citizenship and Immigration Services

DEPARTMENT OF HOMELAND SECURITY

## **EXHIBIT D**

U.S. Department of Homeland Security  
P.O. Box 82521  
Lincoln, NE 68501-2521



U.S. Citizenship  
and Immigration  
Services

January 10, 2006

Refer to File Number: LIN9901950346



SATWINDER SINGH  
C/O EC VILLAREAL  
LIBERTY IMMIGRATION  
727 WEBSTER ST  
FAIRFIELD CA 94533

Dear Sir or Madam:

RE: Form: I485

Beneficiary: SINGH, SATWINDER

**REQUEST FOR EVIDENCE**

The documentation submitted is not sufficient to warrant favorable consideration of your petition/application.

**See Attachment for Details**

**Your response must be received in this office by April 04, 2006.**

Your case is being held in this office pending your response. Within this period you may:

1. Submit all of the evidence requested;
2. Submit some or none of the evidence requested and ask for a decision based upon the record; or
3. Withdraw the application or petition. (It is noted that if you request that the application or petition be withdrawn, the filing fee cannot be refunded).

You must submit all of the evidence at one time. Submission of only part of the evidence requested will be considered a request for a decision based upon the record. No extension of the period allowed to submit evidence will be granted. If the evidence submitted does not establish that your case was approvable at the time it was filed, it can be denied.

If you do not respond to this request within the time allowed, your case will be considered abandoned and denied. Evidence received in this office after the due date may not be considered.

**PLACE THIS LETTER ON TOP OF YOUR RESPONSE. SUBMISSION OF EVIDENCE WITHOUT THIS LETTER WILL DELAY PROCESSING OF YOUR CASE AND MAY RESULT IN A DENIAL. PLEASE USE THE ENCLOSED ENVELOPE TO MAIL ADDITIONAL EVIDENCE REQUEST BACK TO THIS OFFICE.**

Sincerely,

Paul M. Pierre  
Acting Director

NSC/paa EX094

Receipt Number: LIN9901950346

## Attachment

Form I-485 must be accompanied by two passport-style natural color photos; therefore, please submit two (2) color photos of yourself, recently taken, and not previously used.

Digital photos or photos that are laser printed will be accepted; however, there must be no discernible pixels or dot patterns. Using a soft pencil or felt pen, print your name (and alien registration number, if known) on the back of each photograph. We suggest that you show these instructions to the photographer who takes the pictures.

For specific information on acceptable passport photos, please visit the Department of State's website at <http://travel.state.gov/passport/pptphotos/>.

Evidence of record indicates that you were granted asylum in the United States as a dependent child. Service records indicate that the principal asylee from whom you derived status is now a United States citizen and no longer meets the definition of a refugee. As a result you no longer qualify as the derivative spouse/child of a refugee/asylee. Therefore, at this time you are not eligible to adjust your status to permanent resident as a dependent. However, Service guidance allows derivative asylees who no longer qualify as a spouse or child to be processed for asylum in their own right, *nunc pro tunc* (now for then), meaning the new asylum grant is retroactive to the original grant of asylum.

In order to complete this process you must complete Form I-589, Application for Asylum, and return it to this office in the provided return envelope. You may go online to [www.uscis.gov](http://www.uscis.gov) for information and to download forms. You may also order immigration forms by phone at 1(800)870-3676.

Processing of your application for permanent residence will continue when we receive the completed Form I-589.

Please provide proof of A number assignments.

You must submit all previously issued passports and visas issued by both the United States, Canada and all foreign governments. You must submit the original documents, photocopies will not be accepted.

You must submit a detailed list of all your previous travel to any foreign country since your grant of asylum. Please submit a detailed explanation of your activities in each country and city where you traveled or visited. You must submit all documentary evidence in your possession regarding your immigration status in all countries you visited. If you do not have any documentary evidence you must submit a sworn affidavit as to your residence and immigration status in that foreign country.

Please submit evidence issued to you by immigrations verifying the two A numbers you are claiming to have been issued to you. Service records indicate you're A number is A75258419 and recent correspondence from you indicated you're A number is A75260419.

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# **EXHIBIT E**

THE UNITED STATES OF AMERICA

Receipt Number: MSC-06-115-14210		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status	
Received Date: January 17, 2006	Priority Date:	Applicant: A075258419 SINGH, SATWINDER	
Notice Date: January 25, 2006	Page 1 OF 1	ASC Code: 3	

SATWINDER SINGH  
4016 MINUET CIRCLE  
RICHMOND CA 94803

Notice Type: Receipt Notice  
Amount Received: \$395.00

The above application has been received. Please notify us immediately if any of the above information is incorrect. If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

**BIOMETRICS-**

The next step is to have your biometrics taken, if required, at a U.S. Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

**PLEASE NOTE-**

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

**WHAT TO BRING TO Your appointment -**

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

**CASE STATUS -**

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

If you have Internet access, you can visit the United States Citizenship and Immigration Services website at [www.USCIS.gov](http://www.USCIS.gov) where you can find valuable information about forms, filing instructions, and immigration services and benefits.

U. S. Citizenship and Immigration Services  
P.O. Box 648005  
Lee's Summit, MO. 64064  
National Customer Service Center: 1-800-375-5283

